IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1248 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of : NO

JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ

5. Whether it is to be circulated to the Civil Judge? : NO

@

A K SOLANKI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1248 of 1993

MR BP TANNA for Petitioner No. 1-7

Ms.Harsha Devani, Asst.GOVERNMENT PLEADER for Respondent No. 1-2

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 15/04/2002

C.A.V.JUDGEMENT

The present petition is filed by the petitioners for the reliefs, interalia, to issue appropriate direction declaring that the petitioners are entitled to

payscale of Rs.380-560/- with retrospective effect, i.e. from the date of their appointment and also to direct the Government to give to the petitioners the payscale of Rs.380-560/- from their respective date of appointment and to pay arrears etc with 15% interest per month.

2. The short facts of the case are that the petitioners were appointed on adhoc basis as proof readers on 18.1.1982 in the payscale of Rs.260-400/- for census work. It is the contention of the petitioners that after their appointment as per the order passed in May, 1982 copy whereof is produced at annexure "C" to the petition, the scale accorded to the petitioners was Rs.350-560/-. However, subsequently, an order dated 13.7.82 was passed by the State Govt whereby it was stated that in the earlier order dated 31.5.82 the correct payscale should be Rs.260-400 and not Rs.350-560/-. The contention of the petitioners in the petition is that they are doing same type of work as being done by the proof readers working in Govt press and others and the proof readers of Govt press are being given payscale of Rs.350-560/- whereas the petitioners who are discharging the same job and they are not given equal pay. The case of the petitioners is that they are also posted in the Govt press on deputation basis and therefore they should get the same payscale being given by the State Govt to the proof readers in Govt. press. Petitioners have preferred this petition invoking the principle of equal pay for equal work.

3. On behalf of the State Govt an affidavit in reply and further affidavit in reply has been filed contending that the capacity of the petitioners as proof readers working in census department can not be equated with the proof readers of the Govt press and it is further submitted that so far as the proof readers of Govt press are concerned there are separate recruitment rules and for appointment of proof readers in Govt press one has to pass a test which is provided as per the recruitment rules which is not in the case so far as the appointment of the petitioners is concerned. It is also submitted that the petitioners are appointed on ad hoc basis. However, the fact remains that though the nomenclature of the petitioners is that of ad hoc they are in service as proof readers engaged for census work and the respondents have contended in the affidavit in reply that the petitioners are not entitled to backwages since the nature of their work is different.

4. Mr.Tanna appearing for the petitioners submitted that the nature of work which the petitioners are discharging is of the same type which is being discharged

by the proof readers working in the Govt press and the contention of Mr.Tanna is that the principles of equal pay for equal work is a wellknown principle guaranteed under the Constitution of India and therefore though the petitioners were appointed in 1982 merely because they preferred the petition in the year 1993 should not be made as a ground for disentitling them to get the equal pay for equal work. Mr.Tanna alternatively submitted that even if this court finds that the petitioners were entitled to equal pay for equal work they can not be granted prospectively and for the arrears the petitioners are prepared to leave the matter to the court for its discretion. Mr.Tanna relied upon the judgment of the Apex Court in the matter of Chief Conservator of Forests vs Jagannath Maruti Kondhare reported in (1996) 2 SCC 293 which is a case for permanency benefits to the casual labour. Mr.Tanna also relied on the judgment of the Apex Court in case of Bhagwati Prasad vs Delhi State Mineral Development Corporation reported in AIR 2001 SC 706 which is a case for deprecating the stand of the statutory authority in not regularising the employees who are working for a longer period as daily rated labourers. Mr.Tanna also relied upon another judgment of the Apex Court in the matter of Union of India vs Tejram Parashramji Bombhate reported in AIR 1992 SC 570 which is a case for regularisation of services teachers. Mr.Tanna submitted that merely because the nomenclature in the appointment order shown is that of adhoc should not made a ground for depriving the petitioners from invoking the principles of equal pay for equal work.

5. Ms.Harsha Devani, Ld.AGP appearing on behalf of respondents submitted that the post of the petitioners is only for census work and they were appointed only on adhoc basis and she submitted that considering the nature of work and the duty being discharged by the petitioners vis a vis the nature and work and duties discharged by the proof readers in the Govt press can not be said to be the same. She further submitted that the proof readers working in Govt press have to send the material directly to the press for printing and it does not require any further supervision or control whereas so far as the petitioners are concerned it is the case of the State Govt that they are working as proof readers subject to supervision and control of Research Assistant, Assistant Director and the Deputy Director of the office. Ms.Devani further submitted that the appointment of proof reader in Govt.press is based on objective test and on passing of that test only appointment orders are required to be issued in the Govt press and whereas so far as the

proof readers working in Dist.Census work no test is prescribed nor any test was held by the department and therefore it can not be equated with the proof readers working in the Govt press. Ms.Devani submitted that the petitioners have accepted the appointment order as back as in the year 1982 and subsequently it is not open to the petitioners to challenge the said scale which was mentioned in the appointment order, more particularly, after a period of 11 years. She further submitted that since the nomenclature is of proof reader, it can not be made a ground for getting payment of equal pay for equal work contending that the other proof readers even though they are differently situated must be granted the same payscale. She further submitted that in the State Government itself Directors of different departments are holding the posts having different payscales as per Rules and therefore merely because of work as a Director it can not be said to be the same in order to invoke the principles of equal pay for equal work. She submitted that in view the nature of work which the petitioners are discharging and in view of specific provisions made in the recruitment rules for appointment of proof readers in the Govt press more particularly for appearing in the test and then to make themselves eligible for appointment the petitioners are not entitled to invoke the principles of equal pay for equal work. Ms.Devani relied upon the judgments of Apex Court in the matters of Federation of All India Customs and Central Excise Stenographers (recognised) vs Union of India reported in (1988) 3 SCC 91, State of Madhya Pradesh vs Pramod Bhartiya reported in (1993) 1 SCC 539, and Garhwal Jal Sansthan Karmachari Union vs State of Uttar Pradesh reported in AIR 1997 SC 2143 to contend that the principles of equal pay for equal work is not applicable where distinction is based on qualitative difference in the functions and the responsibilities and she submitted that since such distinction is available in the present case the petitioners are not entitled to invoke the principles of equal pay for equal work even if the defence of the State that the petition is barred by delay and latches is not considered.

6. Before I examine the facts of the case, it is necessary to deal with the contention of the respondents that the petition is barred by delay and latches. In this regard, if the record is seen the petitioners have been appointed as back as on 18.1.1982. When the appointment order was issued the scale granted to the petitioners was Rs.260-400/- and the petitioners have not made any grievance, whatsoever, at the time when they were appointed. In view of that for a period of about 10

years the petitioners have continued to accept such order and payscale which is granted to the petitioners, i.e. Rs.260-400/- and therefore it can be legitimately argued that the petitioners have accepted the order and therefore they are not entitled to challenge the same after a period of 11 years. At the same time, principle of equal pay for equal work is read in the fundamental rights guaranteed under the Constitution of India and it is well settled that there can be no bar or waiver of any fundamental right and therefore the principles of estoppel or acquiescence can not operate against the fundamental rights guaranteed under the Constitution of India. Further even the payment of salary or wages is a continuous action on the part of the State Govt and therefore if the case is to be considered for invoking the principle with retrospective effect. Perhaps, the State may be justified in raising the defence but so far as the prospective effect is concerned if the court finds that there is breach of fundamental rights, the principles of delay, laches and/or acquiescence should not come in the way of petitioners and therefore the said contention deserves to be rejected and is rejected.

7. In view of the rival contentions of the parties, it will have to be examined as to whether the post held by the petitioners can be said to be the same as being held by the proof readers working in the Govt press and whether the work and the responsibilities which are being discharged by the petitioners are the same as being discharged by the proof readers working in the Govt press.

8. The petitioners have made averments alleging that they are holding the same post and doing the same type of work and for contending that it is of same type of work, the petitioners have also produced one order dated 13.11.1987 posting the petitioners to work in the printing press. However, a bare perusal of the order dated 13.11.1987 issued by the Deputy Director of Dist.Census shows that in the press also the nature of work which was to be discharged by the petitioners was for census. It may not be forgotten that the petitioners are appointed on adhoc basis and therefore their status can not be 100% at par with permanent employees. Even if it is presumed for the sake of argument that since the petitioners are continued since 1982 on the same post as adhoc employees therefore they should not be deprived of the status of permanent employee as the proof reader working in Govt press then also in view of the affidavit in reply filed on behalf of respondents it is apparent that for the appointment of proof readers in the Govt

press there are separate recruitment rules known as "Proof Readers Recruitment Rules, 1976" and after undergoing the process of recruitment rules including passing of prescribed test the person can be appointed as proof reader in the Govt press. So far as the petitioners are concerned, they have been appointed through Employment Exchange and no recruitment rules are provided. Further, the nature of work which the proof reader in the Govt press is doing is a continuous and arduous in nature and the proof reader in the Govt press have to send the material directly to the press and the work undertaken by the petitioners is subject to supervision and control of Research Assistant, Assistant Director and Deputy Director of the office.

9. Under the circumstances, I am of the view that considering the scheme of recruitment rules for proof reader working in the Govt press and considering the nature of work being discharged by the proof readers working in the Govt press it can not be said that the petitioners are doing the same type of work and the same quality and with same responsibility as it is being done by the proof reader working in the Govt press. In view of this, Mr.Tanna is not right in contending that the petitioners are doing same work of the same quality and with same responsibility as it is being done by the proof reader in the Govt press. Further, in view of separate recruitment rules for the post of proof reader in the Govt press the contention of Mr.Tanna can not be accepted that the post held by the petitioners as proof reader in the census work is the same to that of the proof reader working in the Govt press.

10. In view of the above discussion. Even if the contention of Mr.Tanna is accepted that petitioners should not be deprived of their legitimate right merely on the ground that in the appointment order it has been mentioned "adhoc", the petitioners would not entitled to invoke the principles of equal pay for equal work in view of the fact that the nature of duty, the quality of work and the post held by the petitioners are different than the proof readers in the Govt press. At this stage, it will be worthwhile to refer to the judgment of the Apex Court in the matter of State of Madhya Pradesh (supra) wherein the Apex Court has held the principles of equal pay for equal work is not applicable where the distinction is based on qualitative difference in the functions and responsibilities. In the present case as observed earlier the petitioners have failed to prove the status, the post, the nature and work and responsibilities are the same as that of the proof

readers working in the Govt press. Therefore the petitioners are not entitled to invoke the principles of equal pay for equal work.

11. In the result, the petition fails and is dismissed. Rule is discharged. There shall be no order as to costs.

15.4.2002 (JAYANT PATEL,J)